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ViaSat, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ViaSat, Inc.,

a Delaware corporation,

Plaintiff

and Counter Defendant,

v.

Acacia Communications, Inc.,

a Delaware corporation,

Defendant

and Counter Claimant,

) Case No.: 3:16-cv-00463-BEN-JMA
)
) **ViaSat, Inc.’s Motion to File Under**
) **Seal: (a) Portions of ViaSat’s Partial**
) **Opposition to Defendant and**
) **Counterclaimant Acacia**
) **Communications, Inc.’s Motion to**
) **Seal Certain Exhibits Submitted in**
) **Support of the Parties’ Summary**
) **Judgment and Daubert Motions;**
) **Cross-Motion To Seal and (b)**
) **Exhibits to the Declaration of**
) **Kenneth Fitzgerald In Support Of**
)
) Dist. Judge: Hon. Roger T. Benitez
) Hon. Magistrate Jan M. Adler

I. Introduction

Plaintiff and Counter Defendant ViaSat, Inc. (“ViaSat”) respectfully requests that the Court file under seal: a) portions of Plaintiff and Counter-Defendant Viasat, Inc.’s Partial Opposition to Defendant and Counterclaimant Acacia Communications, Inc.’s Motion to Seal Certain Exhibits Submitted in Support of the Parties’ Summary Judgment and Daubert Motions and Cross-Motion To Seal; and (b) Exhibits A-F and H-R to the Declaration of Kenneth M. Fitzgerald In Support. The motion and accompanying exhibits contain, quote, or discuss documents designated by the parties as ‘HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the terms of the Stipulated Protective Order in this action, which requires Viasat to seek to file them under seal. As set forth in the Partial Opposition and Cross-Motion To Strike, certain portions of the documents in issue disclose and discuss Viasat’s trade secrets, Viasat’s competitively sensitive technical information at issue in this action, and documents claimed by Acacia to warrant sealing.

II. Argument

“A strong presumption of access to judicial records applies fully to dispositive pleadings and their attachments.” *Algarin v. Maybelline, LLC*, 2014 690410 at *2 (S.D. Cal. Feb. 21, 2014). To warrant a request to seal, “compelling reasons” to seal the documents must exist. *Id*; *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Relevant factors include the “public interest in understanding the judicial process and whether disclosure of the material could result in improper use.” *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 679 fn. 6 (9th Cir. 2010). Documents are properly filed under seal where disclosure would force a party to disclose trade secrets or other valuable confidential and proprietary business information. *See, e.g., Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *In re Electronic Arts, Inc.*, 298 Fed. Appx. 568, 569 (9th Cir. 2008); *Bauer Bros. LLC v. Nike, Inc.*, 2012 WL1899838, at *4 (S.D. Cal. May 24, 2012 (granting request to seal non-public, confidential financial data, including customer listings, accounting methods,

1 and cost analysis).

2 ViaSat has compelling reasons to file under seal because the information
3 ViaSat seeks to seal has been identified as confidential by Acacia and ViaSat, and
4 includes the parties' confidential business, technical, and financial information,
5 including ViaSat's asserted trade secrets. Publicly filing the information would
6 prejudice ViaSat and Acacia by revealing business, technical, and financial
7 information that could be used for competitive advantage outside of this case.
8 Therefore, there are compelling reasons to seal this information.

9 Here, ViaSat seeks to seal the following documents:

- 10 a) A redacted version of ViaSat's Partial Opposition and Cross-Motion to
11 Seal, which includes some detailed discussion of the documents
12 claimed by one or both parties to constitute confidential information
13 under the Stipulated Protective Order;
- 14 b) Exhibit A to the Declaration of Kenneth M. Fitzgerald in Support of
15 Viasat, Inc.'s Partial Opposition to Defendant and Counterclaimant
16 Acacia Communications, Inc.'s Motion to Seal Certain Exhibits
17 Submitted in Support of the Parties' Summary Judgment and Daubert
18 Motions (herein "Fitzgerald Opposition Declaration") is a redacted
19 version of the Rebuttal Expert Report Regarding Damages by Brent K.
20 Bersin, dated November 21, 2017;
- 21 c) Exhibit B to the Fitzgerald Opposition Declaration is a redacted
22 version of the Opening Report of Dr. Marwan Hassoun, dated
23 October 27, 2017;
- 24 d) Exhibit C to the Fitzgerald Opposition Declaration is a redacted
25 version of the Expert Report of Dr. Richard W. Koralek, dated
26 November 21, 2017;
- 27 e) Exhibit D to the Fitzgerald Opposition Declaration is hereto is a
28 redacted version of the Opening Report of Professor Krishna

1 Narayanan, Ph.D., dated October 27, 2017;

- 2 f) Exhibit E to the Fitzgerald Opposition Declaration is hereto is a
3 redacted version of the Expert Report of Stephen D. Prowse, Ph.D.,
4 CFA, dated October 27, 2017;
- 5 g) Exhibit F to the Fitzgerald Opposition Declaration is a redacted
6 version of the Expert Report of Dr. Alexander Vardy, dated November
7 21, 2017;
- 8 h) Exhibit H to the Fitzgerald Opposition Declaration is the Rebuttal
9 Expert Report Regarding Damages by Brent K. Bersin, dated
10 November 21, 2017. It contains Viasat's redactions and highlighted
11 portions showing what additional portions Acacia seeks to redact;
- 12 i) Exhibit I to the Fitzgerald Opposition Declaration is Attached as
13 Exhibit I hereto is the Opening Report of Professor Krishna
14 Narayanan, Ph.D., dated October 27, 2017. It contains Viasat's
15 redactions and highlighted portions showing what additional portions
16 Acacia seeks to redact;
- 17 j) Exhibit J to the Fitzgerald Opposition Declaration is the Expert Report
18 of Stephen D. Prowse, Ph.D., CFA, dated October 27, 2017. It
19 contains Viasat's redactions (and highlighted portions showing what
20 additional portions Acacia seeks to redact;
- 21 k) Exhibit K to the Fitzgerald Opposition Declaration is the Expert
22 Report of Dr. Alexander Vardy, dated November 21, 2017. It contains
23 Viasat's redactions and highlighted portions showing what additional
24 portions Acacia seeks to redact;
- 25 l) Exhibit L to the Fitzgerald Opposition Declaration is the Opening
26 Report of Professor Krishna Narayanan, Ph.D., dated October 27,
27 2017. It contains Acacia's redactions from its Motion to Seal and
28 highlighted portions showing what additional portions Viasat seeks to

1 redact;

- 2 m) Exhibit M to the Fitzgerald Opposition Declaration is the Expert
 3 Report of Dr. Alexander Vardy, dated November 21, 2017. It contains
 4 Acacia's redactions from its Motion to Seal and highlighted portions
 5 showing what additional portions Viasat seeks to redact;
- 6 n) Exhibit N to the Fitzgerald Opposition Declaration is the Expert
 7 Report of Stephen D. Prowse, Ph.D., CFA, dated October 27, 2017. It
 8 contains Acacia's redactions from its Motion to Seal and highlighted
 9 portions showing what additional portions Viasat seeks to redact;
- 10 o) Exhibit O to the Fitzgerald Opposition Declaration is the Rebuttal
 11 Expert Report Regarding Damages by Brent K. Bersin, dated
 12 November 21, 2017. It contains Acacia's redactions from its Motion to
 13 Seal and highlighted portions showing what additional portions Viasat
 14 seeks to redact;
- 15 p) Exhibit P to the Fitzgerald Opposition Declaration is the Opening
 16 Report of Dr. Marwan Hassoun, dated October 27, 2017. It contains
 17 Acacia's redactions from its Motion to Seal and highlighted portions
 18 showing what additional portions Viasat seeks to redact;
- 19 q) Exhibit Q to the Fitzgerald Opposition Declaration is the Expert
 20 Report of Dr. Richard W. Koralek, dated November 21, 2017. It
 21 contains Acacia's redactions from its Motion to Seal and highlighted
 22 portions showing what additional portions Viasat seeks to redact; and
- 23 r) Exhibit R to the Fitzgerald Opposition Declaration contains excerpts
 24 from the Deposition Transcript of Christian Rasmussen taken on
 25 October 11, 2017.

26 **III. Conclusion**

27 For the foregoing reasons, and pending the Court's decision on the parties'
 28 motions to seal, Viasat respectfully requests the Court seal a) portions of Plaintiff

1 and Counter-Defendant Viasat, Inc.'s Partial Opposition to Defendant and
2 Counterclaimant Acacia Communications, Inc.'s Motion to Seal Certain Exhibits
3 Submitted in Support of the Parties' Summary Judgment and Daubert Motions and
4 Cross-Motion To Seal; and (b) Exhibits A-F and H-R to the Declaration of Kenneth
5 M. Fitzgerald In Support
6

7 Dated: July 2, 2018

FITZGERALD KNAIER LLP

8 By: s/ *Kenneth M. Fitzgerald*

9 Kenneth M. Fitzgerald, Esq.

10 David M. Beckwith, Esq.

11 -and-

12 WARREN LEX LLP

13 Matthew S. Warren, Esq.

14 Patrick M. Shields, Esq.

15 Attorneys for Plaintiff and Counter
16 Defendant ViaSat, Inc.
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CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that am causing the foregoing document to be served by electronic means via email upon counsel for Acacia Communications, Inc., per the agreement of counsel.

Dated: July 2, 2018

s/ Kenneth M. Fitzgerald

Kenneth M. Fitzgerald, Esq.